

1 Thomas S. Brazier, Esq./ SBN 055484  
Jeffrey F. Oneal, Esq./ SBN 129072  
2 LaMORE, BRAZIER, RIDDLE & GIAMPAOLI  
1570 The Alameda, Suite 150  
3 San Jose, California 95126-2305  
Telephone: (408) 280-6800  
4 Facsimile: (408) 275-6284

5 Attorneys for Defendant  
SWD TRANSPORT LLC  
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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 CAROLYN BRYAN AND DAVID CLARK,

**Case No.: C-08-03480 EMC**

11 Plaintiffs,

**ANSWER OF DEFENDANT SWD  
TRANSPORT LLC TO COMPLAINT;**

12  
13 v.

**[DEMAND FOR JURY TRIAL]**

14  
15 MARK WAYNE DARRAH, SWD TRANSPORT  
LLC, and DOES 1 to 10, inclusive,

16 Defendants.  
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18 COMES NOW defendant, SWD TRANSPORT LLC hereby responds to Plaintiffs  
19 Complaint filed in the Superior Court of the State of California in and for the County of  
20 Alameda and removed by Defendant to the United States District Court as follows:

21 Responding to paragraph 1 of Plaintiff's Complaint, Defendant admits all of the  
22 allegations contained therein.

23 Responding to paragraph 2 of Plaintiff's Complaint, Defendant admits all of the  
24 allegations contained therein.

25 Responding to paragraph 5 of Plaintiff's Complaint, Defendant admits that it is not a  
26 natural person, but denies that it is a "Corporation".

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1 Responding to paragraph 6 of Plaintiff's Complaint, Defendant is without sufficient  
2 knowledge or information to form a belief as to the truth of the allegations contained in said  
3 paragraph, and on that basis denies each and every allegation therein.

4 Responding to paragraph 8 of Plaintiff's Complaint, Defendant admits injury to person or  
5 damage to personal property occurred within the jurisdictional area of Alameda County but  
6 denies Alameda County Superior Court is the proper Court in that the matter involves citizens of  
7 different states.

8 Responding to paragraph 10 of Plaintiff's Complaint, Defendant admits all of the  
9 allegations contained therein.

10 Responding to paragraph 11 of Plaintiff's Complaint, Defendant denies each and every  
11 allegation contained therein.

12 Responding to paragraph MV-1 of Plaintiff's Complaint, Defendant admits on May 29,  
13 2006 an incident occurred on Interstate 580 westbound near Hopyard Road in Pleasanton,  
14 California but denies that it was negligent or that it was the legal (proximate) cause of injuries  
15 and damages to Plaintiffs.

16 Responding to paragraph MV-2a of Plaintiff's Complaint, Defendant admits all of the  
17 allegations contained therein.

18 Responding to paragraph MV-2b of Plaintiff's Complaint, Defendant admits that SWD  
19 Transport LLC employed Mark Wayne Darrah who was in the course and scope of his  
20 employment at the time of the incident.

21 Responding to paragraph MV-2c of Plaintiff's Complaint, Defendant admits all  
22 allegations contained therein.

23 Responding to paragraph MV-2d of Plaintiff's Complaint, Defendant admits all  
24 allegations contained therein.

25 Responding to paragraph MV-2e of Plaintiff's Complaint, Defendant admits that Mark  
26 Wayne Darrah was an employee of SWD Transport LLC and was acting within the scope of his  
27 employment.  
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**AFFIRMATIVE DEFENSES**

AS AND FOR A FIRST, SEPARATE AND DISTINCT ANSWER AND AFFIRMATIVE DEFENSE, it is alleged that the Complaint and each cause of action therein fail to state facts sufficient to constitute a cause of action against these Answering Defendants.

AS AND FOR A SECOND, SEPARATE AND DISTINCT ANSWER AND AFFIRMATIVE DEFENSE, these Answering Defendants allege that Plaintiff was comparatively negligent in and about the premises and these Answering Defendants pray that any and all damages sustained by Plaintiff be reduced by the percentage of his fault.

AS AND FOR A THIRD, SEPARATE AND DISTINCT ANSWER AND AFFIRMATIVE DEFENSE, these Answering Defendants allege that said injuries sustained by Plaintiff were either wholly or in part negligently caused by persons, firms, corporations or entities other than these Answering Defendants, and said negligence is either imputed to Plaintiff by reason of the relationship of said parties to Plaintiff and/or said negligence comparatively reduces the percentage of negligence, if any, by these Answering Defendants.

AS AND FOR A FOURTH, SEPARATE AND DISTINCT ANSWER AND AFFIRMATIVE DEFENSE, these Answering Defendants allege that at all times and places mentioned in the Complaint herein, Plaintiff failed to mitigate the amount of his damages. The damages claimed by Plaintiff could have been mitigated by due diligence on his part or by one acting under similar circumstances. The Plaintiff's failure to mitigate is a bar to his recovery under the Complaint.

**PRAYER FOR RELIEF**

Defendant SWD Transport LLC prays that PlaintiffS take nothing by reason of their Complaint;

That Defendant SWD Transport LLC be awarded costs and fees in defending the action filed by Plaintiffs;

For all other relief the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Defendant, SWD TRANSPORT LLC hereby demands a jury trial.

Dated: July 31, 2008

LaMORE, BRAZIER, RIDDLE & GIAMPAOLI

By: 

JEFFREY F. ONEAL

Attorneys for Defendant

SWD TRANSPORT LLC

**CERTIFICATE OF SERVICE**

I am a citizen of the United States and employed in the county aforesaid; I am over the age of eighteen years, and not a party to the within action; my business address is 1570 The Alameda, Suite 150, San Jose, California . On the date set forth below I served the documents described below:

**ANSWER OF DEFENDANT SWD TRANSPORT LLC TO COMPLAINT; DEMAND FOR JURY TRIAL**

on the following person(s) in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Ron Maidenberg, Esq.  
3645 Grand Avenue, Suite 307  
Oakland, CA 94610  
Telephone: 510-444-3330  
Facsimile: 510-444-3527

Attorney for Plaintiff  
CAROLYN BRYAN AND DAVID CLARK

☒ (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at San Jose, California.

☐ (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand this date to the offices of the addressee(s).

☐ (BY FACSIMILE) I caused such document(s) to be transmitted by facsimile on this date to the offices of addressee(s).

☐ (BY FEDERAL EXPRESS) I caused such envelope(s) with all fees fully prepaid to be placed in the Federal Express office at San Jose, California.

☐ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☒ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

EXECUTED on July 31, 2008 at San Jose, California.

  
NATALYN FRAZIER

15651-097